

In the
United States Court of Appeals
For the Eleventh Circuit

No. 24-11191

In re: WILLIAM HAROLD WRIGHT, JR.,

Petitioner.

On Petition for Writ of Mandamus to the

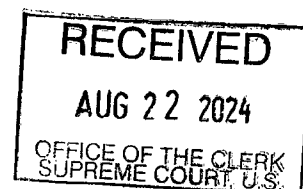
United States District Court for the

Middle District of Florida

D.C. Docket No. 8:21-cv-02691-KKM-SPF

ORDER:

2.9.1 "APPENDIX B."



24-11191

Order of the Court

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to provide relief, mandamus relief is not proper. *See Lifestar Ambulance Serv., Inc. v. United States*, 365 F.3d 1293, 1298 (11th Cir. 2004).

Here, to the extent that Wright's petition challenges the district court's denial of his first amended § 2255 motion, Wright had, and exercised, the adequate alternative remedy of appealing that denial. *Jackson*, 130 F.3d at 1004. He similarly had, and exercised, the adequate alternative remedy of filing his first amended § 2255 motion to challenge the court's alleged constructive amendment of the indictment. *Id.*

Accordingly, Wright's mandamus petition is frivolous, and his IFP motion is hereby **DENIED**.

/s/ Elizabeth L. Branch

UNITED STATES CIRCUIT JUDGE

affidavit is insufficient to show that Nowak's testimony was material or vital to his defense. *See Tejada v. Dugger*, 941 F.2d 1551, 1559 (11th Cir. 1991) (recognizing that a petitioner is not entitled to habeas relief "when his claims are merely 'conclusory allegations unsupported by specifics' or 'contentions that in the face of the record are wholly incredible'" (citations omitted); *see also Saunders v. United States*, 278 F. App'x 976, 979 (11th Cir. 2008) (affirming the denial of § 2255 relief because the petitioner failed to allege "reasonably specific, non-conclusory facts with respect to his claim such that there was a reasonable probability sufficient to undermine confidence in the outcome").

Furthermore, Wright fails to demonstrate that the district court erred in relying on *Bizzard* to quash any proposed subpoena of Nowak or to limit testimony about Nowak's complaint affidavit. Wright also neglects to argue that he complied with DOJ regulations or obtained authorization from the DOJ to subpoena Nowak. Consequently, Wright's claim presented in Ground One lacks merit and entitles him to no relief.

B. Ground Two

Wright claims that the indictment was deficient because it failed to specify the location of the charged conspiracy or name his co-conspirators and because it provided an "open-ended" date for the conspiracy. (Civ. Doc. 4 at 5; Civ. Doc. 5 at 12-14; Civ. Doc. 37 at 5-8.) He argues that, by denying his motion to dismiss the indictment for insufficiently informing him of the conspiracy charged against him, the district court constructively amended the indictment. (*See generally, id.*)

The United States contends (correctly), (Civ. Doc. 20 at 15), that this claim is procedurally barred because the appellate court resolved the claim against Wright.

“A procedural bar prevents a defendant from raising arguments in a § 2255 proceeding that he raised and [the appellate court] rejected on direct appeal.” *Seabrooks v. United States*, 32 F.4th 1375, 1383 (11th Cir. 2022) (citing *Stoufflet v. United States*, 757 F.3d 1236, 1239 (11th Cir. 2014)).

Before trial, Wright moved to dismiss the indictment, arguing that it failed to specify the location of the conspiracy or name his co-conspirators and also because it provided an “open ended” date for the conspiracy. (Crim. Doc. 65.) The district court denied the motion, concluding that “the indictment alleges the essential elements of the charged offenses, adequately notifies [Wright] of the charges, and enables him to rely on any judgment entered under the Indictment as a bar against double jeopardy.” (Crim. Doc. 77 at 3–4.)

On appeal, Wright repeated this challenge to the indictment, and the appellate court rejected it, concluding, “Wright’s indictment was sufficient as to the conspiracy charge even though it did not specify a location narrower than the Middle District of Florida and did not list his co-conspirators by name.” *Wright*, 825 F. App’x at 679. The appellate court found that the indictment “was not open-ended” but rather “provided enough notice to Wright of the dates of the alleged conspiracy to ‘conform[] to minimal constitutional standards.’” *Id.* (quoting *United States v. Varkonyi*, 645 F.2d 453, 456 (5th Cir. Unit A 1981)).

Wright’s claim that the district court constructively amended the indictment is procedurally barred. The appellate court specifically addressed and rejected the claim that the conspiracy charged in the indictment was deficient because it failed to inform Wright of the charged conspiracy. Consequently, the Court declines to consider the merits of the claim. *See, e.g., United States v. Nyhuis*, 211 F.3d 1340,

1343 (11th Cir. 2000) (“The district court is not required to reconsider claims of error that were raised and disposed of on direct appeal.”); *Mills v. United States*, 36 F.3d 1052, 1056 (11th Cir. 1994) (concluding that the “district court properly refused to substantively address the [§ 2255 petitioner’s] remaining contentions” that the appellate court “already rejected”); *United States v. Rowan*, 663 F.2d 1034, 1035 (11th Cir. 1981) (“This Court is not required on § 2255 motions to reconsider claims of error raised and disposed of on direct appeal.”).

C. Ground Three

Wright claims that the prosecution engaged in misconduct when it intentionally presented the false and misleading testimony of Nowak to the grand jury. (Civ. Doc. 4 at 7; Civ. Doc. 5 at 15–22; Civ. Doc. 37 at 17–18.) He argues, without any explanation, that the United States “was fully aware” that Nowak’s affidavit was false and misleading. (Civ. Doc. 4 at 7.) He argues that the district court summarily rejected his claim of prosecutorial misconduct and neglected to “[go] on record and [give] a finding why the court [denied] the motion.” (Civ. Doc. 37 at 17.)

Prosecutorial misconduct may serve as a basis for relief under § 2255 if the misconduct is so great that it “renders the defendant’s trial so fundamentally unfair that the resulting conviction is a denial of due process.” *Davis v. Zant*, 36 F.3d 1538, 1545 (11th Cir. 1994) (quotations omitted). “Although it is not the task of a habeas court to retry the defendant, the standard for reviewing prosecutorial misconduct requires a weighing of the nature and scope of the instances of misconduct against the evidence of guilt against the accused.” *Id.* at 1546. “Clearly, where the evidence against the accused is very strong, in order to merit relief,